

Chapter 1: Eligibility

Vermont Division for the Blind and Visually Impaired
Policy and Procedures Manual

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Section I. Definitions

- A. **“Family member”**, for purposes of receiving vocational rehabilitation services, means a person:
1. Who either—
 - a) Is a relative or guardian of an applicant or eligible person; or
 - b) Lives in the same household as an applicant or eligible person;
 2. Who has a substantial interest in the well-being of that person; and
 3. Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible person to achieve an employment outcome.
- B. **“Individual’s representative”**, for purposes of receiving vocational rehabilitation services, means a representative chosen by the applicant or eligible individual to act on his/her behalf, including a parent or other family member, guardian, or advocate, unless a representative has been appointed by a court to represent the individual.
1. .
- C. **“Individual with a significant disability”** means a person:
1. Who has a significant physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
 2. Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
 3. Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.
- D. **“Requires services”** means that, without provision of vocational rehabilitation services, the person would not be able to prepare for, enter into, engage in, advance in, or retain gainful employment consistent with his/her strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.
- E. **“Trial Work Experience”** means supported employment, on the job training, progressive employment training placements and other experiences using realistic integrated work settings.

- F. **Legally blind:** 1. Central acuity does not exceed 20/200 in the better eye with corrections; or 2. The field of vision is restricted to 20 degrees or less i.e., there is little peripheral vision.
- G. **Visual Impairment:** an eye condition may not be so severe as to be legally blind, but vision in the better eye with best correction is not better than 20/50; or, the condition is of a progressive nature which, if untreated, can reasonably be expected to lead to blindness.
- H. **“Substantial impediment to employment”** means that a physical or mental impairment (in light of attendant, medical, psychological, vocational, educational, and other related factors) hinders a person from preparing for, entering into, engaging in, or retaining employment consistent with his/her abilities and capabilities.

Section II. Prohibited Factors

When determining eligibility for vocational rehabilitation services, the following factors apply or are prohibited:

- A. No duration of residence requirement shall be imposed that excludes from services any applicant who is present in the state unless the person is in the United States illegally;

Guidance – Residency requirements.

- *Length of time in the state shall not be a factor in provision of services to a person, provided that the basic conditions of eligibility are met.*
- *In the case of inquiries for services from persons residing in other states, no application will be furnished or accepted by DBVI until the person is in the state. The person will normally be directed to the closest DBVI office in the state from which s/he is inquiring.*
- *Persons from neighboring states receiving treatment in Vermont facilities will be referred to their home state. DBVI may, at its discretion, assist in expediting the referral to the receiving state agency.*
- *Occasionally a referred person lives close to the border in a neighboring state, but the mailing address is through a Vermont post office. Regardless of the mailing address, the person will normally be expected to be served by the agency of the state in which s/he resides. An exception may be allowed if:*
 - ⊕ *The person’s employment is/was in Vermont, and s/he carries out the preponderance of his/her business here – for example, shopping and banking; and*
 - ⊕ *Either s/he was injured at work so falls under Vermont’s Workers’ Compensation Act or his/her employer participates with DVR in an Employee Assistance Program;*

- ⊕ *Access to vocational rehabilitation counseling (e.g., frequency of contact with a rehabilitation counselor and geographic distance from one) is more favorable to the referred person with Vermont DBVI than with the neighboring state's rehabilitation agency; and*
- ⊕ *The person is not already a consumer of public vocational rehabilitation services in another state.*

End Guidance.

- B. No applicant or group of applicants shall be excluded or found ineligible solely on the basis of the type of disability; and the eligibility requirements are applied without regard to the:
1. Employment history or current employment status of the applicant;
 2. Expected employment outcome of the applicant;
 3. Educational status or current educational credential of the applicant;
 4. Source of referral for vocational rehabilitation services; or
 5. Age, gender, race, color, creed, or national origin of the applicant.

Guidance – Age exception.

DBVI will not normally serve persons under age 18 without permission of the parent, guardian, or legal representative (see Chapter 14, "Transition Services" for more information).

End Guidance.

- C. Eligibility requirements shall be applied without regard to the particular service needs or anticipated cost of services required by an applicant or applicant's family.

Section III. Basic Conditions of Eligibility

Requirements for Eligibility

- A. An applicant's eligibility for vocational rehabilitation services shall be based on all of the following requirements:
1. The applicant must be an individual that is blind or has a visual impairment as a primary disability which results in a substantial impediment to employment for the applicant;
 2. The applicant must require vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment; and
 3. There is no entitlement to vocational rehabilitation services even if the applicant meets all of the requirements for services.

Guidance – Requirements for service.

A person who is an "individual with a disability" may still be ineligible for services if s/he does not require services to obtain or retain an employment outcome. In this case a consumer has adequate supports, work experience, and skills to achieve their employment goals and there is no substantial impediment to employment and they do not require services to obtain, maintain or regain employment.

End Guidance.

Ability to Benefit from DBVI Services and Trial Work Experiences

- B. It shall be presumed that a person can benefit from vocational rehabilitation services unless clear and convincing evidence demonstrates that the person is incapable of benefiting from such services in terms of an employment outcome and be successful without long-term supports. This does not change the requirement that an applicant must require vocational rehabilitation services. Before making an ineligibility determination due to the significant nature of the disability, the Division must first explore the person's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences with appropriate supports. The Division must develop a written plan to periodically assess the individual's abilities, capabilities and capacity to perform in competitive integrated work situations through the use of trial work experiences. Such experiences shall be of sufficient variety and over a sufficient period of time to determine the eligibility of the person or to determine the existence of clear and convincing evidence that the person is indeed incapable of benefiting in terms of an employment outcome.
 - 1. "Clear and convincing evidence" means the Division shall have a high degree of certainty before it can conclude that a person is incapable of benefiting from services in terms of an employment outcome. The "clear and convincing" standard constitutes the highest standard used in our civil system of law and is to be applied on a case-by-case basis. The term "clear" means unequivocal. Clear and convincing evidence must be based on a functional assessment of the individual's ability to benefit from vocational rehabilitation services through realistic employment settings.
- C. Although there is no time limit for this determination, the Division feels that such an exploration should be able to be completed within 180 days of the end of the usual 60-day limit for eligibility – in other words, within 240 days from the date of application. However, more time may be used if needed. It is suggested that local job developers and supported employment programs, if appropriate, be used to locate suitable work settings.
- D. The case record must contain the rationale for believing the person may not be able to benefit in terms of an employment outcome, the need for more than the usual 60 days, and how, using work settings, the determination of eligibility may be made.

- E. If the trial work experience (TWE) necessitates going past the 60-day limit from application to certification, no formal individualized plan must be signed by the person; however, the counselor must develop a written plan noting questions or concerns to be resolved during TWE and evaluating information received on each site against the stated needs.
- F. In any instance when a counselor is considering utilizing a Trial Work Period, they should consult with their Senior Counselor and/or Director for guidance around this decision and resulting processes. The Trial Work Period may be used when working with a consumer who has been consistently unsuccessful in multiple prior employment efforts with DBVI. A trial work experience will help demonstrate what has or has not changed in their situation. In other cases, a counselor may choose not to advance a medically eligible consumer to an eligible and use assessments similar to the trial work experience as a means of empowering the consumer and providing them an opportunity to determine their own ability to move into an Individualized Plan for Employment.

Presumptive Eligibility for SSDI and SSI Recipients

- G. A recipient of Social Security Disability Insurance (SSDI, aka Title II) or Supplemental Security Income (SSI, aka Title XVI) shall be considered to be a person with a significant disability and shall be presumed to be eligible for services. Signing an application for services shall be considered as the person's intent to achieve an employment outcome. Trial work experiences cannot be used for an eligibility determination for individuals receiving SSI/SSDI benefits as they are automatically considered medically eligible by meeting presumptive eligibility.
- H. If a counselor can verify the receipt of SSA benefits via an award letter, copy of deposits from SSA, a Benefit Query or other forms, no additional medical information is needed to find the person eligible.

Need for Further Medical Documentation or Functional Data

- I. From a counseling perspective, further medical documentation will almost always be needed to better understand strengths, limitations, accommodation needs and to develop a strong plan for employment. In some cases, a counselor may not be able to proceed with development of an IPE if medical information is not obtained.

For Example: There are serious health consequences that could result from DBVI supporting a work goal that is unknowingly in direct opposition to medical recommendations.

- J. If the counselor needs further functional assessment data to make an eligibility determination, they may use a Trial Work Experience.

Section IV. Using Existing Information

- A. Existing data, including counselor observation, shall be used whenever possible to expedite the determination of eligibility. Existing information may include medical and

psychological records, education records, information provided by the person or with his/her family members, information used by the Social Security Administration, and determinations made by officials of other agencies involved with people with disabilities.

Guidance – Examples of counselor observation.

Examples of counselor observation might include:

- *An applicant who is clearly deaf and uses an ASL interpreter.*
- *An applicant who presents with a significant and observable physical disability.*

Guidance – How to solicit and interpret existing information.

Information furnished by the person or his/her family may be very useful in determining eligibility. Such information need not be in writing but may be responses to pertinent questions such as: "How does your disability affect your ability to work?" and "What types of services do you think you need to get past the disability and get to work?" Information furnished by the person also may include his/her physical presence and/or behaviors as observed by the counselor.

Certification of eligibility may be made immediately based on information furnished by the person or a family member if the counselor feels that a disability exists which is a substantial impediment to employment and that the person requires services for work. The counselor must then obtain medical information supporting the information used to certify the person as eligible for services. Additional information to develop a good plan of services may be gathered after eligibility has been determined if both the person seeking services and the counselor feel it may be helpful.

The rationale for using existing data is to streamline the eligibility process and to expedite access to services. Decisions regarding whether and how specific data are to be used must be made on a case-by-case basis, and while the accuracy and timeliness of existing data are important factors in determining their usefulness, older data can be used if still pertinent.

Information from sources other than education and Social Security officials may be used to expedite the eligibility determination process. Examples are the person's personal physician, a previous or current employer, an insurance company, an advocate or representative of the person, and any organization or individual suggested by the person seeking services. Other sources may include mental health and developmental disabilities agencies, Medicaid and Medicare agencies, Workers' Compensation, and other programs that require that a "disability" be established as a condition for receiving services.

End Guidance.

- B. To the extent existing information does not describe the current functioning of the person or is unavailable, insufficient, or inappropriate to make an eligibility

determination, the counselor will procure and assess whatever examinations, tests, assessments, etc. (including assistive technology devices/services, trial work experiences, personal assistance services and any other support services) that are necessary to determine whether a person is eligible.

Section V. Factors and Decisions in Determining Eligibility

Determining Primary vs. Secondary Disability

- A. The primary disability impedes function significantly and the secondary disability impedes function to a lesser degree. Function in this case is related to work tasks and work tolerance. This determination is often derived from the consumer's stated experience, but in some cases the counselor may determine the primary disability based on intensity of related service need.

Guidance — Need for primary and secondary disability determination.

Is a Secondary Disability required?

No, the disabling conditions that impact the person's ability to work should be reflected but there is no requirement to have two conditions listed.

If the medical diagnosis changes, should the Certification of Eligibility/Ineligibility form be amended?

No. The certification represents what the person was found eligible for at the time of certification and does not need to be amended. Changes in the consumer's circumstances and medical condition should be documented in case notes and updated medical documents.

Determining Type and Source Based on Impact of Disability

- B. Counselors should use their own discretion to determine the type and source based on information they have from observations, medical information, and consumer report. First, consider how the disabling condition impacts the person and then make an educated determination of which type code is most appropriate. Differentiation based on the person's experience is encouraged.

Example: The type and source may be different from one consumer to the next even when the medical diagnosis is the same. Consider which symptoms most impair the person's ability to work to help determine the most applicable type code.

Determining Functional Capacity

- C. It is important for counselors to consider how the person interprets their functional strengths and limitations in relation to their disabling condition. Completing this section of the Certification of Eligibility/Ineligibility Form by determining functional loss based on

the consumer's experience is more helpful/accurate than only referring to what is typical of a particular medical diagnosis.

- D. When considering the mobility section of the Certification form, counselors will determine if mobility limitations are present as a result of the disabling condition(s). NOTE: This section is not intended to capture limited mobility as a result of a criminal suspension or legal limitations. If criminal involvement does impact their access to transportation, this would not be used as an eligibility criterion, but rather an aspect of their plan for employment to assist with this barrier if possible.

Section VI. Timeframe for Determining Eligibility

- A. The eligibility determination shall be made as soon as possible but no later than **sixty (60) days** after the person has applied for services. Exceptions to this 60-day timeframe may occur only if:
1. Exceptional and unforeseen circumstances beyond the control of the Division preclude a determination within sixty days and the person and the Division agree to a specific extension of time. In this circumstance, the reason for the delay and the specific date the certification date will be completed by **must** be documented in the case record; or
 2. The counselor feels that, due to the significance of the disability, the person may not be able to benefit in terms of an employment outcome and implementation of a plan to explore the person's abilities, capabilities, and capacity to perform in competitive integrated work settings, including trial work experiences, will exceed the 60-day timeframe.

Guidance – Timeframes for determining eligibility.

The need to use sixty days to determine eligibility should be rare. In some cases, written information from other sources to determine existence of a disability and ultimate eligibility may not be needed. In the absence of newly written materials from other sources, a counselor may determine that a person's disability makes him/her eligible for services as soon as the initial meeting in many situations such as the following:

- *The person has received services on a prior occasion and his/her record of services remains pertinent, is available, and will become part of the new record; or*
- *Information from another source adequate to fulfill the eligibility criteria is known to exist, is attainable, and has been requested from that source; or*
- *The disability is obvious to the counselor (as well as to any other reasonable person).*

If medical/psychological data from another source is not in the record, the counselor must describe the functional limitations posed by the disability and how they interfere with gainful work.

If more than sixty (60) days is needed, the record of services should indicate the reason(s), the specific date by which the certification will be completed and that the person agrees to the delay. Certification of eligibility means that an IPE can be developed and that services can begin. Each case may fall into one of three types:

Fast Track

In some situations, the IPE may be written at the same time as certification. Those situations are:

- *The person is known to the Division, disability-related data are present or easily attainable, and the vocational goal, services needed, and resources are known and attainable.*
- *The person is new to the Division, but other features in the example above are the same, and the counselor and individual feel comfortable with proceeding.*

Plan Development and Implementation

In some situations, more time is needed for gathering information and for planning.

- *The person has acquired a disability and must change jobs but doesn't know how, to what type of job, etc. Aptitude testing, counseling and guidance, and referral to pertinent resources may be the only services needed to identify a suitable direction and write an IPE.*
- *The person receives Workers' Compensation and must work through the Workers' Compensation "protocol" for returning to work. An IPE may be written with counseling and guidance re: Workers' Compensation rules and working through the protocol in collaboration with a private rehabilitation worker as the initial service. The IPE may be amended later if necessary.*

Information and Extensive Support

In other situations, more time is needed for planning as well as service delivery.

- *The person has no work history and very significant disabilities. A series of evaluations and trials will be needed to identify a vocational goal. It is known from the start that long-term involvement may be needed.*
- *The person has excellent work and educational histories but has recently become disabled. Although the person may be able to resume*

his/her former job with accommodations and assistive technology, s/he will likely need multiple services over an extended period of time.

End Guidance.

Section VII. Aliens

Prior to developing an Individualized Plan for Employment, the immigration status of aliens must be clarified. An IPE will not be developed with an alien whose visa prohibits work. Also, an illegal alien does not have proper credentials and an IPE cannot be completed; consequently, services will not be provided.

Section VIII. Ineligibility Determinations

If the Division determines that an applicant is ineligible for services or determines that a person receiving services under an IPE is no longer eligible, the Division shall:

- A. Make the determination only after providing an opportunity for full consultation with the person or, as appropriate, the person's representative;
- B. Inform the person in writing (supplemented as needed by other appropriate modes of communication consistent with the informed choice of the person) of the ineligibility determination, including the reasons for that determination, the requirements under this section, and the means by which the person may express and seek remedy for any dissatisfaction, including the procedures for review of a determination by the counselor, by way of mediation, administrative review, and/or fair hearing;
- C. Provide the person with a description of services available from the Client Assistance Program and information on how to contact that program; and
- D. Review within twelve (12) months (and annually thereafter if requested by the person or, if appropriate, by the person's representative) any ineligibility determination that is based on a finding that the person is incapable of achieving an employment outcome. This review need not be conducted in situations in which the person has refused it, is no longer present in the state, whose whereabouts is unknown, or whose medical condition is rapidly progressive or terminal.

Section IX. Closure without Eligibility Determination

The Division may not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in or is unavailable to complete an assessment for determining eligibility and priority for services, and the Division has made a reasonable number of attempts to contact the applicant (or, if appropriate, the applicant's representative) to encourage the applicant's participation.

Section X. Closure with Eligibility Determination

- A. If, following a determination of eligibility, a determination is made that the person is not able to achieve an employment outcome at this time, the criterion in Section VIII must be followed because an ineligibility determination has become necessary.
- B. If closure is for another reason, activities appropriate for the reason shall be carried out as described in Section IX.

Guidance – Regarding sections IX and X.

If closure is due to a reason other than the significance of the disability (e.g., the person declines to participate in or is unavailable to complete rehabilitation activities, or other comparable reason), activities appropriate to the reason shall be carried out. Examples:

Moves without forwarding address: In the record of services describe reasons for determining that the person moved without a forwarding address, and state that the case is being closed.

Does not participate: Send notification of impending closure; give deadline for response to discuss (not less than two weeks from date of letter); advise of appeal rights including availability of the Client Assistance Program. Upon Reaching deadline or following discussion, the record of services should show the case was closed.

Requests closure: Send confirmation letter; include appeal rights and availability of the Client Assistance Program, if the request may be related to dissatisfaction with DBVI.

End Guidance.